

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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SENATE BILL 458*

Short Title: Viatical Settlements Rewrite-AB.

(Public)

Sponsors: Senator Wellons.

Referred to: Insurance and Consumer Protection.

March 15, 2001

A BILL TO BE ENTITLED

AN ACT TO REVISE NORTH CAROLINA'S LAW REGULATING VIATICAL
SETTLEMENTS IN ACCORDANCE WITH A MODEL ACT OF THE
NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.

The General Assembly of North Carolina enacts:

SECTION 1. The title of Article 58 of Chapter 58 of the General Statutes
reads as rewritten:

"Article 58.

~~General Regulations of Business Life Insurance.~~ Life Insurance and Viatical
Settlements."

SECTION 2. Article 58 of Chapter 58 of the General Statutes is amended as
follows:

- (1) By designating G.S. 58-58-1 through G.S. 58-58-40 as Part 1 with the
heading "General Provisions."
- (2) By designating G.S. 58-58-45 through G.S. 58-58-65 as Part 2 with the
heading "Financial Provisions."
- (3) By designating G.S. 58-58-70 through G.S. 58-58-120 as Part 3 with
the heading "Insurable Interests and Other Rights."
- (4) By designating G.S. 58-58-125 through G.S. 58-58-170 as Part 4 with
the heading "Miscellaneous Provisions."
- (5) By reserving G.S. 58-58-175 through G.S. 58-58-195 for future
codification.

SECTION 3. Article 58 of Chapter 58 of the General Statutes is amended by
adding a new Part to read:

"Part 5. Viatical Settlements.

§ 58-58-200. Short title.

This Part may be cited as the Viatical Settlements Act.

§ 58-58-205. Definitions.

- 1 (1) 'Advertising' means any written, electronic, or printed communication
2 or any communication by means of recorded telephone messages or
3 transmitted on radio, television, the Internet, or similar
4 communications media, including film strips, motion pictures, and
5 videos, published, disseminated, circulated, or placed before the
6 public, directly or indirectly, for the purpose of creating an interest in
7 or inducing a person to purchase or sell a life insurance policy or an
8 interest in a life insurance policy under a viatical settlement contract or
9 a viatical settlement purchase agreement.
- 10 (2) 'Business of viatical settlements' means an activity involved in, but not
11 limited to, the offering, solicitation, negotiation, procurement,
12 effectuation, purchasing, investing, financing, monitoring, tracking,
13 underwriting, selling, transferring, assigning, pledging, hypothecating,
14 or in any other manner, of viatical settlement contracts or purchase
15 agreements.
- 16 (3) 'Chronically ill' means:
- 17 a. Being unable to perform at least two activities of daily living
18 (i.e., eating, toileting, transferring, bathing, dressing, or
19 continence);
- 20 b. Requiring substantial supervision to protect the individual from
21 threats to health and safety due to severe cognitive impairment;
22 or
- 23 c. Having a level of disability similar to that described in sub-
24 subdivision a. of this subdivision as determined by the
25 Secretary of Health and Human Services;
- 26 (4) 'Financing entity' means an underwriter, placement agent, lender,
27 purchaser of securities, purchaser of a policy or certificate from a
28 viatical settlement provider, credit enhancer, or any entity that has a
29 direct ownership in a policy or certificate that is the subject of a
30 viatical settlement contract, but:
- 31 a. Whose principal activity related to the transaction is providing
32 funds to effect the viatical settlement or purchase of one or
33 more viaticated policies; and
- 34 b. Who has an agreement in writing with one or more licensed
35 viatical settlement providers to finance the acquisition of
36 viatical settlement contracts. Financing entity does not include a
37 nonaccredited investor or viatical settlement purchaser.
- 38 (5) 'Fraudulent viatical settlement act' includes:
- 39 a. Acts or omissions committed by any person who, knowingly or
40 with intent to defraud, for the purpose of depriving another of
41 property or for pecuniary gain, commits, or permits its
42 employees or its agents to engage in acts including:
- 43 1. Presenting, causing to be presented, or preparing with
44 knowledge or belief that it will be presented to or by a

1 viatical settlement provider, viatical settlement broker,
2 viatical settlement purchaser, viatical settlement
3 investment agent, financing entity, insurer, insurance
4 producer, or any other person, false material information,
5 or concealing material information, as part of, in support
6 of or concerning a fact material to one or more of the
7 following:

8 I. An application for the issuance of a viatical
9 settlement contract or insurance policy.

10 II. The underwriting of a viatical settlement contract
11 or insurance policy.

12 III. A claim for payment or benefit under a viatical
13 settlement contract or insurance policy.

14 IV. Premiums paid on an insurance policy or as a
15 result of a viatical settlement purchase agreement.

16 V. Payments and changes in ownership or
17 beneficiary made in accordance with the terms of
18 a viatical settlement contract, viatical settlement
19 purchase agreement, or insurance policy.

20 VI. The reinstatement or conversion of an insurance
21 policy.

22 VII. In the solicitation, offer, effectuation, or sale of a
23 viatical settlement contract, insurance policy, or
24 viatical settlement purchase agreement.

25 VIII. The issuance of written evidence of viatical
26 settlement contract, viatical settlement purchase
27 agreement or insurance.

28 IX. A financing transaction.

29 2. Employing any device, scheme, or artifice to defraud
30 related to viaticated policies;

31 b. In the furtherance of a fraud or to prevent the detection of a
32 fraud any person commits or permits its employees or its agents
33 to:

34 1. Remove, conceal, alter, destroy, or sequester from the
35 Commissioner the assets or records of a licensee or other
36 person engaged in the business of viatical settlements;

37 2. Misrepresent or conceal the financial condition of a
38 licensee, financing entity, insurer, or other person;

39 3. Transact the business of viatical settlements in violation
40 of laws requiring a license, certificate of authority, or
41 other legal authority for the transaction of the business of
42 viatical settlements; or

43 4. File with the Commissioner or the insurance regulator of
44 another jurisdiction a document containing false

- 1 information or otherwise conceals information about a
2 material fact from the Commissioner.
- 3 c. Embezzlement, theft, misappropriation, or conversion of
4 monies, funds, premiums, credits, or other property of a viatical
5 settlement provider, insurer, insured, viator, insurance policy
6 owner or any other person engaged in the business of viatical
7 settlements or insurance; or
- 8 d. Recklessly entering into, brokering, otherwise dealing in a
9 viatical settlement contract, the subject of which is a life
10 insurance policy that was obtained by presenting false
11 information concerning any fact material to the policy or by
12 concealing, for the purpose of misleading another, information
13 concerning any fact material to the policy, where the viator or
14 the viator's agent intended to defraud the policy's issuer.
15 'Recklessly' means engaging in the conduct in conscious and
16 clearly unjustifiable disregard of a substantial likelihood of the
17 existence of the relevant facts or risks, such disregard involving
18 a gross deviation from acceptable standards of conduct;
- 19 e. Attempting to commit, assisting, aiding, or abetting in the
20 commission of, or conspiracy to commit the acts or omissions
21 specified in this subsection.
- 22 (6) 'Policy' means an individual or group policy, group certificate, contract
23 or arrangement of life insurance affecting the rights of a resident of
24 this State or bearing a reasonable relation to this State, regardless of
25 whether delivered or issued for delivery in this State.
- 26 (7) 'Related provider trust' means a titling trust or other trust established
27 by a licensed viatical settlement provider or a financing entity for the
28 sole purpose of holding the ownership or beneficial interest in
29 purchased policies in connection with a financing transaction. The
30 trust shall have a written agreement with the licensed viatical
31 settlement provider under which the licensed viatical settlement
32 provider is responsible for ensuring compliance with all statutory and
33 regulatory requirements and under which the trust agrees to make all
34 records and files related to viatical settlement transactions available to
35 the Commissioner as if those records and files were maintained
36 directly by the licensed viatical settlement provider.
- 37 (8) 'Special purpose entity' means a corporation, partnership, trust, limited
38 liability company, or other similar entity formed solely to provide
39 either directly or indirectly access to institutional capital markets for a
40 financing entity or licensed viatical settlement provider.
- 41 (9) 'Terminally ill' means having an illness or sickness that can reasonably
42 be expected to result in death in 24 months or less.
- 43 (10) 'Viatical settlement investment agent' means a person who is an
44 appointed or contracted agent of a licensed viatical settlement provider

1 who solicits or arranges the funding for the purchase of a viatical
2 settlement by a viatical settlement purchaser and who is acting on
3 behalf of a viatical settlement provider.

4 a. A viatical settlement investment agent shall not have any
5 contact directly or indirectly with the viator or have knowledge
6 of the identity of the viator.

7 b. A viatical settlement investment agent is deemed to represent
8 the viatical settlement provider of whom the viatical settlement
9 investment agent is an appointed or contracted agent.

10 (11) 'Viatical settlement broker' means a person that on behalf of a viator
11 and for a fee, commission, or other valuable consideration offers or
12 attempts to negotiate viatical settlements contracts between a viator
13 and one or more viatical settlement providers. Notwithstanding the
14 manner in which the viatical settlement broker is compensated, a
15 viatical settlement broker is deemed to represent only the viator and
16 owes a fiduciary duty to the viator to act according to the viator's
17 instructions and in the best interest of the viator. The term does not
18 include an attorney, certified public accountant, or a financial planner
19 accredited by a nationally recognized accreditation agency, who is
20 retained to represent the viator and whose compensation is not paid
21 directly or indirectly by the viatical settlement provider or purchaser.

22 (12) 'Viatical settlement contract' means a written agreement establishing
23 the terms under which compensation or anything of value will be paid,
24 which compensation or value is less than the expected death benefit of
25 the insurance policy or certificate, in return for the viator's assignment,
26 transfer, sale, devise, or bequest of the death benefit or ownership of
27 any portion of the insurance policy or certificate of insurance. A
28 viatical settlement contract also includes a contract for a loan or other
29 financing transaction with a viator secured primarily by an individual
30 or group life insurance policy, other than a loan by a life insurance
31 company under the terms of the life insurance contract, or a loan
32 secured by the cash value of a policy. A viatical settlement contract
33 includes an agreement with a viator to transfer ownership or change
34 the beneficiary designation at a later date regardless of the date that
35 compensation is paid to the viator.

36 (13) 'Viatical settlement provider' means a person, other than a viator, that
37 enters into or effectuates a viatical settlement contract. Viatical
38 settlement provider does not include:

39 a. A bank, savings bank, savings and loan association, credit
40 union, or other licensed lending institution that takes an
41 assignment of a life insurance policy as collateral for a loan;

42 b. The issuer of a life insurance policy providing accelerated
43 benefits under rules adopted by the Commissioner and under
44 the contract;

- 1 c. An authorized or eligible insurer that provides stop loss
2 coverage to a viatical settlement provider, purchaser, financing
3 entity, special purpose entity, or related provider trust;
- 4 d. A natural person who enters into or effectuates no more than
5 one agreement in a calendar year for the transfer of life
6 insurance policies for any value less than the expected death
7 benefit;
- 8 e. A financing entity;
- 9 f. A special purpose entity;
- 10 g. A related provider trust;
- 11 h. A viatical settlement purchaser; or
- 12 i. An accredited investor or qualified institutional buyer as
13 defined respectively in Regulation D, Rule 501 or Rule 144A of
14 the Federal Securities Act of 1933, as amended, and who
15 purchases a viaticated policy from a viatical settlement
16 provider.
- 17 (14) 'Viatical settlement purchase agreement' means a contract or
18 agreement, entered into by a viatical settlement purchaser, to which the
19 viator is not a party, to purchase a life insurance policy or an interest in
20 a life insurance policy, that is entered into for the purpose of deriving
21 an economic benefit.
- 22 (15) 'Viatical settlement purchaser means' a person who gives a sum of
23 money as consideration for a life insurance policy or an interest in the
24 death benefits of a life insurance policy, or a person who owns or
25 acquires or is entitled to a beneficial interest in a trust that owns a
26 viatical settlement contract or is the beneficiary of a life insurance
27 policy that has been or will be the subject of a viatical settlement
28 contract, for the purpose of deriving an economic benefit. Viatical
29 settlement purchaser does not include:
- 30 a. A licensee under this Part;
- 31 b. An accredited investor or qualified institutional buyer as
32 defined respectively in Regulation D, Rule 501 or Rule 144A of
33 the Federal Securities Act of 1933, as amended;
- 34 c. A financing entity;
- 35 d. A special purpose entity; or
- 36 e. A related provider trust.
- 37 (16) 'Viaticated policy' means a life insurance policy or certificate that has
38 been acquired by a viatical settlement provider under a viatical
39 settlement contract.
- 40 (17) 'Viator' means the owner of a life insurance policy or a certificate
41 holder under a group policy who enters or seeks to enter into a viatical
42 settlement contract. For the purposes of this Part, a viator shall not be
43 limited to an owner of a life insurance policy or a certificate holder
44 under a group policy insuring the life of an individual with a terminal

1 or chronic illness or condition except where specifically addressed.

2 Viator does not include:

3 a. A licensee under this Part;

4 b. An accredited investor or qualified institutional buyer as
5 defined respectively in Regulation D, Rule 501 or Rule 144A of
6 the Federal Securities Act of 1933, as amended;

7 c. A financing entity;

8 d. A special purpose entity; or

9 e. A related provider trust.

10 **"§ 58-58-210. License requirements.**

11 (a) No person shall operate as a viatical settlement provider or viatical settlement
12 broker without first obtaining a license from the insurance regulator of the state of
13 residence of the viator. If there is more than one viator on a single policy and the viators
14 are residents of different states, the viatical settlement shall be governed by the law of
15 the state in which the viator having the largest percentage ownership resides or, if the
16 viators hold equal ownership, the state of residence of one viator agreed upon in writing
17 by all viators.

18 (b) A person shall not operate as a viatical settlement investment agent without
19 first obtaining a license from the Commissioner of the state of residence of the viatical
20 settlement purchaser. If there is more than one purchaser of a single policy and the
21 purchasers are residents of different states, the viatical settlement purchase agreement
22 shall be governed by the law of the state in which the purchaser having the largest
23 percentage ownership resides or, if the purchasers hold equal ownership, the state of
24 residence of one purchaser agreed upon in writing by all purchasers.

25 (c) Application for a viatical settlement provider, viatical settlement broker, or
26 viatical settlement investment agent license shall be made to the Commissioner by the
27 applicant on a form prescribed by the Commissioner, and these applications shall be
28 accompanied by a fee of one hundred dollars (\$100.00).

29 (d) Licenses may be renewed from year to year on the anniversary date upon
30 payment of the annual renewal fee of one hundred dollars (\$100.00). Failure to pay the
31 fees by the renewal date results in expiration of the license.

32 (e) The applicant shall provide information on forms required by the
33 Commissioner. The Commissioner shall have authority, at any time, to require the
34 applicant to fully disclose the identity of all stockholders, partners, officers, members,
35 and employees, and the Commissioner may, in the exercise of the Commissioner's
36 discretion, refuse to issue a license in the name of a legal entity if not satisfied that any
37 officer, employee, stockholder, partner, or member thereof who may materially
38 influence the applicant's conduct meets the standards of this Part.

39 (f) A license issued to a legal entity authorizes all partners, officers, members,
40 and designated employees to act as viatical settlement providers, viatical settlement
41 brokers, or viatical settlement investment agents, as applicable, under the license, and
42 all those persons shall be named in the application and any supplements to the
43 application.

1 (g) Upon the filing of an application and the payment of the license fee, the
2 Commissioner shall make an investigation of each applicant and issue a license if the
3 Commissioner finds that the applicant:

- 4 (1) If a viatical settlement provider, has provided a detailed plan of
5 operation;
6 (2) Is competent and trustworthy and intends to act in good faith in the
7 capacity involved by the license applied for;
8 (3) Has a good business reputation and has had experience, training, or
9 education so as to be qualified in the business for which the license is
10 applied;
11 (4) If a legal entity, provides a certificate of good standing from the state
12 of its domicile; and
13 (5) If a viatical settlement provider or viatical settlement broker, has
14 provided an antifraud plan that meets the requirements of G.S. 58-58-
15 275.

16 (h) The Commissioner shall not issue a license to a nonresident applicant, unless
17 a written designation of an agent for service of process is filed and maintained with the
18 Commissioner or the applicant has filed with the Commissioner, the applicant's written
19 irrevocable consent that any action against the applicant may be commenced against the
20 applicant by service of process on the Commissioner.

21 (i) A viatical settlement provider, viatical settlement broker, or viatical
22 settlement investment agent shall provide to the Commissioner new or revised
23 information about officers, ten percent (10%) or more stockholders, partners, directors,
24 members, or designated employees within 10 days after the change.

25 **"§ 58-58-215. License revocation and denial.**

26 (a) The Commissioner may refuse to issue, suspend, revoke, or refuse to renew
27 the license of a viatical settlement provider, viatical settlement broker or viatical
28 settlement investment agent if the Commissioner finds that:

- 29 (1) There was any material misrepresentation in the application for the
30 license;
31 (2) The licensee or any officer, partner, member, or key management
32 personnel has been convicted of fraudulent or dishonest practices, is
33 subject to a final administrative action or is otherwise shown to be
34 untrustworthy or incompetent;
35 (3) The viatical settlement provider demonstrates a pattern of
36 unreasonable payments to viators;
37 (4) The licensee or any officer, partner, member, or key management
38 personnel has been found guilty of, or has pleaded guilty or *nolo*
39 *contendere* to, any felony, or to a misdemeanor involving fraud or
40 moral turpitude, regardless of whether a judgment of conviction has
41 been entered by the court;
42 (5) The viatical settlement provider has entered into any viatical
43 settlement contract that has not been approved pursuant to this Part;

1 (6) The viatical settlement provider has failed to honor contractual
2 obligations set out in a viatical settlement contract or a viatical
3 settlement purchase agreement;

4 (7) The licensee no longer meets the requirements for initial licensure;

5 (8) The viatical settlement provider has assigned, transferred, or pledged a
6 viaticated policy to a person other than a viatical settlement provider
7 licensed in this State, viatical settlement purchaser, an accredited
8 investor, or qualified institutional buyer as defined respectively in
9 Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of
10 1933, as amended, financing entity, special purpose entity, or related
11 provider trust; or

12 (9) The licensee or any officer, partner, member, or key management
13 personnel has violated any provision of this Part.

14 (b) If the Commissioner denies a license application or suspends, revokes, or
15 refuses to renew the license of a viatical settlement provider, viatical settlement broker,
16 or viatical settlement investment agent the Commissioner shall conduct a hearing in
17 accordance with Chapter 150B of the General Statutes.

18 **"§ 58-58-220. Approval of viatical settlement contracts and disclosure statements.**

19 A person shall not use a viatical settlement contract or provide to a viator a
20 disclosure statement form in this State unless filed with and approved by the
21 Commissioner. The Commissioner shall disapprove a viatical settlement contract form
22 or disclosure statement form if, in the Commissioner's opinion, the contract or
23 provisions contained therein are unreasonable, contrary to the interests of the public, or
24 otherwise misleading or unfair to the viator. At the Commissioner's discretion, the
25 Commissioner may require the submission of advertising material.

26 **"§ 58-58-225. Reporting requirements and privacy.**

27 (a) Each licensee shall file with the Commissioner on or before June 1 of each
28 year an annual statement containing such information as the Commissioner may
29 prescribe by regulation.

30 (b) Except as otherwise allowed or required by law, a viatical settlement
31 provider, viatical settlement broker, viatical settlement investment agent, insurance
32 company, insurance producer, information bureau, rating agency or company, or any
33 other person with actual knowledge of an insured's identity, shall not disclose that
34 identity as an insured, or the insured's financial or medical information to any other
35 person unless the disclosure:

36 (1) Is necessary to effect a viatical settlement between the viator and a
37 viatical settlement provider and the viator and insured have provided
38 prior written consent to the disclosure;

39 (2) Is necessary to effect a viatical settlement purchase agreement between
40 the viatical settlement purchaser and a viatical settlement provider and
41 the viator and insured have provided prior written consent to the
42 disclosure;

1 (3) Is provided in response to an investigation or examination by the
2 Commissioner or any other governmental officer or agency or pursuant
3 to the requirements of G.S. 58-58-269;

4 (4) Is a term of or condition to the transfer of a policy by one viatical
5 settlement provider to another viatical settlement provider;

6 (5) Is necessary to permit a financing entity, related provider trust, or
7 special purpose entity to finance the purchase of policies by a viatical
8 settlement provider and the viator and insured have provided prior
9 written consent to the disclosure;

10 (6) Is necessary to allow the viatical settlement provider or viatical
11 settlement broker or their authorized representatives to make contacts
12 for the purpose of determining health status; or

13 (7) Is required to purchase stop loss coverage.

14 **"§ 58-58-230. Authority, scope and scheduling of examinations.**

15 (a) The Commissioner may conduct an examination under this Part of a licensee
16 as often as the Commissioner in his or her sole discretion deems appropriate.

17 (b) For purposes of completing an examination of a licensee under this Part, the
18 Commissioner may examine or investigate any person, or the business of any person, in
19 so far as the examination or investigation is, in the sole discretion of the Commissioner,
20 necessary or material to the examination of the licensee.

21 (c) In lieu of an examination under this Part of any foreign or alien licensee
22 licensed in this State, the Commissioner may, at the Commissioner's discretion, accept
23 an examination report on the licensee as prepared by the Commissioner for the
24 licensee's state of domicile or port-of-entry state.

25 **"§ 58-58-232. Record retention requirements.**

26 (a) A person required to be licensed by this Part shall for five years retain copies
27 of all:

28 (1) Proposed, offered, or executed contracts, purchase agreements,
29 underwriting documents, policy forms, and applications from the date
30 of the proposal, offer, or execution of the contract or purchase
31 agreement, whichever is later;

32 (2) Checks, drafts, or other evidence and documentation related to the
33 payment, transfer, deposit, or release of funds from the date of the
34 transaction; and

35 (3) Other records and documents related to the requirements of this Part.

36 (b) This section does not relieve a person of the obligation to produce these
37 documents to the Commissioner after the retention period has expired if the person has
38 retained the documents.

39 (c) Records required to be retained by this section must be legible and complete
40 and may be retained in paper, photograph, microprocess, magnetic, mechanical, or
41 electronic media, or by any process that accurately reproduces or forms a durable
42 medium for the reproduction of a record.

43 **"§ 58-58-234. Conduct of examinations.**

1 (a) Upon determining that an examination should be conducted, the
2 Commissioner shall issue an examination warrant appointing one or more examiners to
3 perform the examination and instructing them as to the scope of the examination. In
4 conducting the examination, the examiner shall observe those guidelines and procedures
5 set forth in the *Examiners' Handbook* adopted by the NAIC. The Commissioner may
6 also employ such other guidelines or procedures as the Commissioner may deem
7 appropriate.

8 (b) Every licensee or person from whom information is sought, its officers,
9 directors, and agents shall provide to the examiners timely, convenient, and free access
10 at all reasonable hours at its offices to all books, records, accounts, papers, documents,
11 assets, and computer or other recordings relating to the property, assets, business, and
12 affairs of the licensee being examined. The officers, directors, employees, and agents of
13 the licensee or person shall facilitate the examination and aid in the examination so far
14 as it is in their power to do so. The refusal of a licensee, by its officers, directors,
15 employees, or agents, to submit to examination or to comply with any reasonable
16 written request of the Commissioner shall be grounds for suspension or refusal of, or
17 nonrenewal of any license or authority held by the licensee to engage in the viatical
18 settlement business or other business subject to the Commissioner's jurisdiction. Any
19 proceedings for suspension, revocation, or refusal of any license or authority shall be
20 conducted pursuant to G.S. 58-2-50.

21 (c) The Commissioner may issue subpoenas, administer oaths, and examine
22 under oath any person as to any matter pertinent to the examination. Upon the failure or
23 refusal of a person to obey a subpoena, the Commissioner may petition the Wake
24 County Superior Court, and upon proper showing, the Court may enter an order
25 compelling the witness to appear and testify or produce documentary evidence. Failure
26 to obey the court order shall be punishable as contempt of court.

27 (d) When making an examination under this Part, the Commissioner may retain
28 attorneys, appraisers, independent actuaries, independent certified public accountants, or
29 other professionals and specialists as examiners, the reasonable cost of which shall be
30 borne by the licensee that is the subject of the examination.

31 (e) Nothing in this Part limits the Commissioner's authority to terminate or
32 suspend an examination in order to pursue other legal or regulatory action under this
33 Chapter. Findings of fact and conclusions made under any examination shall be *prima*
34 *facie* evidence in any legal or regulatory action.

35 (f) Nothing contained in this Part shall be construed to limit the Commissioner's
36 authority to use and, if appropriate, to make public any final or preliminary examination
37 report, any examiner or licensee working papers or other documents, or any other
38 information discovered or developed during the course of any examination in the
39 furtherance of any legal or regulatory action which the Commissioner may, in his or her
40 sole discretion, deem appropriate.

41 **"§ 58-58-235. Examination reports.**

42 (a) Examination reports shall be comprised of only facts appearing upon the
43 books, records, or other documents of the licensee, its agents or other persons examined,
44 or as ascertained from the testimony of its officers or agents or other persons examined

1 concerning its affairs, and such conclusions and recommendations as the examiners find
2 reasonably warranted from the facts.

3 (b) No later than 60 days after completion of the examination, the examiner in
4 charge shall file with the Commissioner a verified written report of examination under
5 oath. Upon receipt of the verified report, the Commissioner shall transmit the report to
6 the licensee examined, together with a notice that shall afford the licensee examined a
7 reasonable opportunity of not more than 30 days to make a written submission or
8 rebuttal with respect to any matters contained in the examination report.

9 (c) If the Commissioner determines that regulatory action is appropriate as a
10 result of an examination, the Commissioner may initiate any proceedings or actions
11 provided by law.

12 **"§ 58-58-237. Confidentiality of examination information.**

13 (a) Names and individual identification data for all viators shall be considered
14 private and confidential information and shall not be disclosed by the Commissioner,
15 unless required by law.

16 (b) Except as otherwise provided in this Part, all examination reports, working
17 papers, recorded information, documents, and copies thereof produced by, obtained by,
18 or disclosed to the Commissioner or any other person in the course of an examination
19 made under this Part, or in the course of analysis or investigation by the Commissioner
20 of the financial condition or market conduct of a licensee shall be confidential by law
21 and privileged, shall not be subject to Chapter 132 of the General Statutes or G.S. 58-2-
22 100, shall not be subject to subpoena, and shall not be subject to discovery or admissible
23 in evidence in any private civil action. The Commissioner is authorized to use the
24 documents, materials, or other information in the furtherance of any regulatory or legal
25 action brought as part of the Commissioner's official duties.

26 (c) Documents, materials, or other information, including, but not limited to, all
27 working papers, and copies thereof, in the possession or control of the NAIC and its
28 affiliates and subsidiaries are confidential and privileged, are not subject to subpoena,
29 and are not subject to discovery or admissible in evidence in any private civil action if
30 they are:

- 31 (1) Created, produced, or obtained by or disclosed to the NAIC and its
32 affiliates and subsidiaries in the course of assisting an examination
33 made under this Part, or assisting a Commissioner in the analysis or
34 investigation of the financial condition or market conduct of a
35 licensee; or
- 36 (2) Disclosed to the NAIC and its affiliates and subsidiaries under
37 subsection (d) of this section by a Commissioner;
- 38 (3) For the purposes of subsection (b) of this section, 'Part' includes the
39 law of another state or jurisdiction that is substantially similar to this
40 Part.

41 (d) Neither the Commissioner nor any person that received the documents,
42 material, or other information while acting under the authority of the Commissioner,
43 including the NAIC and its affiliates and subsidiaries, shall be permitted to testify in any

1 private civil action concerning any confidential documents, materials, or information
2 subject to subsection (a) of this section.

3 (e) In order to assist in the performance of the Commissioner's duties, the
4 Commissioner:

5 (1) May share documents, materials, or other information, including the
6 confidential and privileged documents, materials, or information
7 subject to subsection (a) of this section, with other state, federal, and
8 international regulatory agencies, with the NAIC and its affiliates and
9 subsidiaries, and with state, federal, and international law enforcement
10 authorities, provided that the recipient agrees to maintain the
11 confidentiality and privileged status of the document, material,
12 communication, or other information;

13 (2) May receive documents, materials, communications, or information,
14 including otherwise confidential and privileged documents, materials,
15 or information, from the NAIC and its affiliates and subsidiaries, and
16 from regulatory and law enforcement officials of other foreign or
17 domestic jurisdictions, and shall maintain as confidential or privileged
18 any document, material, or information received with notice or the
19 understanding that it is confidential or privileged under the laws of the
20 jurisdiction that is the source of the document, material, or
21 information; and

22 (3) May enter into agreements governing sharing and use of information
23 consistent with this subsection.

24 (f) No waiver of any applicable privilege or claim of confidentiality in the
25 documents, materials, or information shall occur as a result of disclosure to the
26 Commissioner under this section or as a result of sharing as authorized in subsection (d)
27 of this section.

28 (g) A privilege established under the law of any state or jurisdiction that is
29 substantially similar to the privilege established under this subsection shall be available
30 and enforced in any proceeding in, and in any court of, this State.

31 (h) Nothing contained in this Part shall prevent or be construed as prohibiting the
32 Commissioner from disclosing the content of an examination report, preliminary
33 examination report or results, or any matter relating thereto, to the Commissioner of any
34 other state or country, or to law enforcement officials of this or any other state or
35 agency of the federal government at any time or to the NAIC, as long as such agency or
36 office receiving the report or matters relating thereto agrees in writing to hold it
37 confidential and in a manner consistent with this Part.

38 **"§ 58-58-239. Conflict of interest.**

39 (a) The Commissioner may not appoint an examiner if the examiner, either
40 directly or indirectly, has a conflict of interest or is affiliated with the management of or
41 owns a pecuniary interest in any person subject to examination under this Part. This
42 section shall not be construed to automatically preclude an examiner from being:

43 (1) A viator;

44 (2) An insured in a viaticated insurance policy; or

1 (3) A beneficiary in an insurance policy that is proposed to be viaticated.

2 (b) Notwithstanding the requirements of this subsection, the Commissioner may
3 retain from time to time, on an individual basis, qualified actuaries, certified public
4 accountants, or other similar individuals who are independently practicing their
5 professions, even though these persons may from time to time be similarly employed or
6 retained by persons subject to examination under this Part.

7 **"§ 58-58-241. Immunity from liability.**

8 (a) No cause of action shall arise nor shall any liability be imposed against the
9 Commissioner, the Commissioner's authorized representatives, or any examiner
10 appointed by the Commissioner for any statements made or conduct performed in good
11 faith while carrying out the provisions of this Part.

12 (b) No cause of action shall arise, nor shall any liability be imposed against any
13 person for the act of communicating or delivering information or data to the
14 Commissioner or the Commissioner's authorized representative or examiner pursuant to
15 an examination made under this Part, if the act of communication or delivery was
16 performed in good faith and without fraudulent intent or the intent to deceive. This
17 subsection does not abrogate or modify in any way any common law or statutory
18 privilege or immunity heretofore enjoyed by any person identified in subsection (a) of
19 this section.

20 (c) A person identified in subsection (a) or (b) of this section shall be entitled to
21 an award of attorneys' fees and costs if he or she is the prevailing party in a civil cause
22 of action for libel, slander, or any other relevant tort arising out of activities in carrying
23 out the provisions of this Part and the party bringing the action was not substantially
24 justified in doing so. For purposes of this section, a proceeding is 'substantially justified'
25 if it had a reasonable basis in law or fact at the time that it was initiated.

26 **"§ 58-58-243. Investigative authority of the Commissioner.**

27 The Commissioner may investigate suspected fraudulent viatical settlement acts and
28 persons engaged in the business of viatical settlements.

29 **"§ 58-58-245. Disclosure.**

30 (a) With each application for a viatical settlement, a viatical settlement provider
31 or viatical settlement broker shall provide the viator with at least the following
32 disclosures no later than the time the application for the viatical settlement contract is
33 signed by all parties. The disclosures shall be provided in a separate document that is
34 signed by the viator and the viatical settlement provider or viatical settlement broker
35 and shall provide the following information:

36 (1) There are possible alternatives to viatical settlement contracts
37 including any accelerated death benefits or policy loans offered under
38 the viator's life insurance policy.

39 (2) Some or all of the proceeds of the viatical settlement may be taxable
40 under federal income tax and State franchise and income taxes, and
41 assistance should be sought from a professional tax advisor.

42 (3) Proceeds of the viatical settlement could be subject to the claims of
43 creditors.

- 1 (4) Receipt of the proceeds of a viatical settlement may adversely affect
2 the viator's eligibility for Medicaid or other government benefits or
3 entitlements, and advice should be obtained from the appropriate
4 government agencies.
- 5 (5) The viator has the right to rescind a viatical settlement contract for 15
6 days after the receipt of the viatical settlement proceeds by the viator,
7 as provided in G.S. 58-58-250(h). If the insured dies during the
8 rescission period, the settlement contract shall be deemed to have been
9 rescinded, subject to repayment of all viatical settlement proceeds and
10 any premiums, loans, and loan interest to the viatical settlement
11 provider or purchaser.
- 12 (6) Funds will be sent to the viator within three business days after the
13 viatical settlement provider has received the insurer or group
14 administrator's acknowledgment that ownership of the policy or
15 interest in the certificate has been transferred and the beneficiary has
16 been designated.
- 17 (7) Entering into a viatical settlement contract may cause other rights or
18 benefits, including conversion rights and waiver of premium benefits
19 that may exist under the policy or certificate, to be forfeited by the
20 viator. Assistance should be sought from a financial adviser.
- 21 (8) Disclosure to a viator shall include distribution of a brochure
22 describing the process of viatical settlements. The NAIC's form for the
23 brochure shall be used unless the Commissioner develops one.
- 24 (9) The disclosure document shall contain the following language: 'All
25 medical, financial, or personal information solicited or obtained by a
26 viatical settlement provider or viatical settlement broker about an
27 insured, including the insured's identity or the identity of family
28 members, a spouse, or a significant other may be disclosed as
29 necessary to effect the viatical settlement between the viator and the
30 viatical settlement provider. If you are asked to provide this
31 information, you will be asked to consent to the disclosure. The
32 information may be provided to someone who buys the policy or
33 provides funds for the purchase. You may be asked to renew your
34 permission to share information every two years.'
- 35 (10) The insured may be contacted by either the viatical settlement provider
36 or viatical settlement broker or its authorized representative for the
37 purpose of determining the insured's health status. This contact is
38 limited to once every three months if the insured has a life expectancy
39 of more than one year, and no more than once per month if the insured
40 has a life expectancy of one year or less.
- 41 (b) A viatical settlement provider shall provide the viator with at least the
42 following disclosures no later than the date the viatical settlement contract is signed by
43 all parties. The disclosures shall be conspicuously displayed in the viatical settlement

1 contract or in a separate document signed by the viator and the viatical settlement
2 provider or viatical settlement broker, and provide the following information:

- 3 (1) State the affiliation, if any, between the viatical settlement provider
4 and the issuer of the insurance policy to be viaticated.
- 5 (2) The document shall include the name, address, and telephone number
6 of the viatical settlement provider.
- 7 (3) A viatical settlement broker shall disclose to a prospective viator the
8 amount and method of calculating the broker's compensation. The term
9 'compensation' includes anything of value paid or given to a viatical
10 settlement broker for the placement of a policy.
- 11 (4) If an insurance policy to be viaticated has been issued as a joint policy
12 or involves family riders or any coverage of a life other than the
13 insured under the policy to be viaticated, the viator shall be informed
14 of the possible loss of coverage on the other lives under the policy, and
15 shall be advised to consult with his or her insurance producer or the
16 insurer issuing the policy for advice on the proposed viatical
17 settlement.
- 18 (5) State the dollar amount of the current death benefit payable to the
19 viatical settlement provider under the policy or certificate. If known,
20 the viatical settlement provider shall also disclose the availability of
21 any additional guaranteed insurance benefits, the dollar amount of any
22 accidental death and dismemberment benefits under the policy or
23 certificate, and the viatical settlement provider's interest in those
24 benefits.
- 25 (6) State the name, business address, and telephone number of the
26 independent third-party escrow agent, and the fact that the viator or
27 owner may inspect or receive copies of the relevant escrow or trust
28 agreements or documents.

29 (c) If the provider transfers ownership or changes the beneficiary of the
30 insurance policy, the provider shall communicate the change in ownership or
31 beneficiary to the insured within 20 days after the change.

32 (d) A viatical settlement provider or its viatical settlement investment agent shall
33 provide the viatical settlement purchaser with at least the following disclosures before
34 the date the viatical settlement purchase agreement is signed by all parties. The
35 disclosures shall be conspicuously displayed in any viatical purchase contract or in a
36 separate document signed by the viatical settlement purchaser and viatical settlement
37 provider or viatical settlement investment agent and shall make the following disclosure
38 to the viatical settlement purchaser:

- 39 (1) The purchaser will receive no returns (i.e., dividends and interest) until
40 the insured dies.
- 41 (2) The actual annual rate of return on a viatical settlement contract is
42 dependent upon an accurate projection of the insured's life expectancy,
43 and the actual date of the insured's death. An annual 'guaranteed' rate
44 of return is not determinable.

- 1 (3) The viaticated life insurance contract should not be considered a liquid
2 purchase since it is impossible to predict the exact timing of its
3 maturity and the funds probably are not available until the death of the
4 insured. There is no established secondary market for resale of these
5 products by the purchaser.
- 6 (4) The purchaser may lose all benefits or may receive substantially
7 reduced benefits if the insurer goes out of business during the term of
8 the viatical investment.
- 9 (5) The purchaser is responsible for payment of the insurance premium or
10 other costs related to the policy, if required by the terms of the viatical
11 purchase agreement. These payments may reduce the purchaser's
12 return. If a party other than the purchaser is responsible for the
13 payment, the name and address of that party also shall be disclosed.
- 14 (6) If the purchaser is responsible for payment of the insurance premiums
15 or other costs related to the policy or if the insured returns to health,
16 the amount of the premiums, if applicable.
- 17 (7) State the name and address of any person providing escrow services
18 and the relationship to the broker.
- 19 (8) The amount of any trust fees or other expenses to be charged to the
20 viatical settlement purchaser shall be disclosed.
- 21 (9) State whether the purchaser is entitled to a refund of all or part of his
22 or her investment under the settlement contract if the policy is later
23 determined to be null and void.
- 24 (10) Disclose that group policies may contain limitations or caps in the
25 conversion rights, additional premiums may have to be paid if the
26 policy is converted, name the party responsible for the payment of the
27 additional premiums and, if a group policy is terminated and replaced
28 by another group policy, state that there may be no right to convert the
29 original coverage.
- 30 (11) Disclose the risks associated with policy contestability including, but
31 not limited to, the risk that the purchaser will have no claim or only a
32 partial claim to death benefits should the insurer rescind the policy
33 within the contestability period.
- 34 (12) Disclose whether the purchaser will be the owner of the policy in
35 addition to being the beneficiary, and if the purchaser is the
36 beneficiary only and not also the owner, the special risks associated
37 with that status, including, but not limited to, the risk that the
38 beneficiary may be changed or the premium may not be paid.
- 39 (13) Describe the experience and qualifications of the person who
40 determines the life expectancy of the insured, i.e., in-house staff,
41 independent physicians, and specialty firms that weigh medical and
42 actuarial data; the information this projection is based on; and the
43 relationship of the projection maker to the viatical settlement provider,
44 if any.

1 (14) Disclosure to an investor shall include distribution of a brochure
2 describing the process of investment in viatical settlements. The
3 NAIC's form for the brochure shall be used unless the Commissioner
4 develops one.

5 (e) A viatical settlement provider or its viatical settlement investment agent shall
6 provide the viatical settlement purchaser with at least the following disclosures no later
7 than at the time of the assignment, transfer, or sale of all or a portion of an insurance
8 policy. The disclosures shall be contained in a document signed by the viatical
9 settlement purchaser and viatical settlement provider or viatical settlement investment
10 agent and shall make the following disclosures to the viatical settlement purchaser:

11 (1) Disclose all the life expectancy certifications obtained by the provider
12 in the process of determining the price paid to the viator.

13 (2) State whether premium payments or other costs related to the policy
14 have been escrowed. If escrowed, state the date upon which the
15 escrowed funds will be depleted and whether the purchaser will be
16 responsible for payment of premiums thereafter and, if so, the amount
17 of the premiums.

18 (3) State whether premium payments or other costs related to the policy
19 have been waived. If waived, disclose whether the investor will be
20 responsible for payment of the premiums if the insurer that wrote the
21 policy terminates the waiver after purchase and the amount of those
22 premiums.

23 (4) Disclose the type of policy offered or sold, i.e., whole life, term life,
24 universal life, or a group policy certificate, any additional benefits
25 contained in the policy, and the current status of the policy.

26 (5) If the policy is term insurance, disclose the special risks associated
27 with term insurance including, but not limited to, the purchaser's
28 responsibility for additional premiums if the viator continues the term
29 policy at the end of the current term.

30 (6) State whether the policy is contestable.

31 (7) State whether the insurer that wrote the policy has any additional rights
32 that could negatively affect or extinguish the purchaser's rights under
33 the viatical settlement contract, what these rights are, and under what
34 conditions these rights are activated.

35 (8) State the name and address of the person responsible for monitoring
36 the insured's condition. Describe how often the monitoring of the
37 insured's condition is done, how the date of death is determined, and
38 how and when this information will be transmitted to the purchaser.

39 (f) The viatical settlement purchase agreement is voidable by the purchaser at
40 any time within three days after the disclosures mandated by subsections (d) and (e) of
41 this section are received by the purchaser.

42 **"§ 58-58-250. General rules.**

43 (a) A viatical settlement provider entering into a viatical settlement contract shall
44 first obtain:

1 (1) If the viator is the insured, a written statement from a licensed
2 attending physician that the viator is of sound mind and under no
3 constraint or undue influence to enter into a viatical settlement
4 contract; and

5 (2) A document in which the insured consents to the release of his or her
6 medical records to a viatical settlement provider or viatical settlement
7 broker and the insurance company that issued the life insurance policy
8 covering the life of the insured.

9 (b) Within 20 days after a viator executes documents necessary to transfer any
10 rights under an insurance policy or within 20 days after entering any agreement, option,
11 promise, or any other form of understanding, expressed or implied, to viaticate the
12 policy, the viatical settlement provider shall give written notice to the insurer that issued
13 that insurance policy that the policy has or will become a viaticated policy. The notice
14 shall be accompanied by the documents required by subsection (c) of this section.

15 (c) The viatical provider shall deliver a copy of the medical release required
16 under subdivision (a)(2) of this section, a copy of the viator's application for the viatical
17 settlement contract, the notice required under subsection (b) of this section, and a
18 request for verification of coverage to the insurer that issued the life insurance policy
19 that is the subject of the viatical transaction. The NAIC's form for verification shall be
20 used unless the Commissioner develops standards for verification.

21 (d) The insurer shall respond to a request for verification of coverage submitted
22 on an approved form by a viatical settlement provider within 30 days after the date the
23 request is received and shall indicate whether, based on the medical evidence and
24 documents provided, the insurer intends to pursue an investigation at this time regarding
25 the validity of the insurance contract.

26 (e) Before or at the time of execution of the viatical settlement contract, the
27 viatical settlement provider shall obtain a witnessed document in which the viator
28 consents to the viatical settlement contract which:

29 (1) Represents that the viator has a full and complete understanding of the
30 viatical settlement contract;

31 (2) Represents that the viator has a full and complete understanding of the
32 benefits of the life insurance policy;

33 (3) Acknowledges that the viator is entering into the viatical settlement
34 freely and voluntarily; and

35 (4) For persons with a terminal or chronic illness or condition,
36 acknowledges that the insured has a terminal or chronic illness or
37 condition and that the terminal or chronic illness or condition was
38 diagnosed after the life insurance policy was issued.

39 (f) If a viatical settlement broker performs any of these activities required of the
40 viatical settlement provider, the provider is deemed to have fulfilled the requirements of
41 this section.

42 (g) All medical information solicited or obtained by any licensee shall be subject
43 to the applicable provisions of State law relating to confidentiality of medical
44 information.

1 (h) All viatical settlement contracts entered into in this State shall provide the
2 viator with an unconditional right to rescind the contract for at least 15 days after the
3 receipt of the viatical settlement proceeds. If the insured dies during the rescission
4 period, the viatical settlement contract shall be deemed to have been rescinded, subject
5 to repayment to the viatical settlement provider or purchaser of all viatical settlement
6 proceeds, and any premiums, loans, and loan interest that have been paid by the viatical
7 settlement provider or purchaser.

8 (i) The purchaser may rescind a viatical settlement contract within three days
9 after the purchaser receives the disclosures required by G.S. 58-58-245(d) and G.S. 58-
10 58-245(e).

11 (j) The viatical settlement provider shall instruct the viator to send the executed
12 documents required to effect the change in ownership, assignment, or change in
13 beneficiary directly to the independent escrow agent. Within three business days after
14 the date the escrow agent receives the document (or from the date the viatical settlement
15 provider receives the documents, if the viator erroneously provides the documents
16 directly to the provider), the provider shall pay or transfer the proceeds of the viatical
17 settlement into an escrow or trust account maintained in a state or federally chartered
18 financial institution whose deposits are insured by the Federal Deposit Insurance
19 Corporation (FDIC). Upon payment of the settlement proceeds into the escrow account,
20 the escrow agent shall deliver the original change in ownership, assignment, or change
21 in beneficiary forms to the viatical settlement provider or related provider trust. Upon
22 the escrow agent's receipt of the acknowledgment of the properly completed transfer of
23 ownership, assignment, or designation of beneficiary from the insurance company, the
24 escrow agent shall pay the settlement proceeds to the viator.

25 (k) Failure to tender consideration to the viator for the viatical settlement contract
26 within the time disclosed under G.S. 58-58-245(a)(6) renders the viatical settlement
27 contract voidable by the viator for lack of consideration until the time consideration is
28 tendered to and accepted by the viator.

29 (l) Contacts with the insured for the purpose of determining the health status of
30 the insured by the viatical settlement provider, or viatical settlement broker after the
31 viatical settlement has occurred shall only be made by the viatical settlement provider or
32 broker licensed in this State or its authorized representatives and shall be limited to once
33 every three months for insureds with a life expectancy of more than one year, and to no
34 more than once per month for insureds with a life expectancy of one year or less. The
35 provider or broker shall explain the procedure for these contacts at the time the viatical
36 settlement contract is entered into. The limitations set forth in this subsection shall not
37 apply to any contacts with an insured for reasons other than determining the insured's
38 health status. Viatical settlement providers and viatical settlement brokers shall be
39 responsible for the actions of their authorized representatives.

40 **"§ 58-58-255. Prohibited practices.**

41 (a) It is a violation of this Part for any person to enter into a viatical settlement
42 contract within a two-year period commencing with the date of issuance of the
43 insurance policy or certificate unless the viator certifies to the viatical settlement

1 provider that one or more of the following conditions have been met within the two-year
2 period:

- 3 (1) The policy was issued upon the viator's exercise of conversion rights
4 arising out of a group or individual policy, provided the total of the
5 time covered under the conversion policy plus the time covered under
6 the prior policy is at least 24 months. The time covered under a group
7 policy shall be calculated without regard to any change in insurance
8 carriers, provided the coverage has been continuous and under the
9 same group sponsorship;
- 10 (2) The viator is a charitable organization exempt from taxation under 26
11 U.S.C. § 501 (c)(3);
- 12 (3) The viator is not a natural person (e.g., the owner is a corporation,
13 limited liability company, partnership, etc.);
- 14 (4) The viator submits independent evidence to the viatical settlement
15 provider that one or more of the following conditions have been met
16 within the two-year period:
- 17 a. The viator or insured is terminally or chronically ill;
18 b. The viator's spouse dies;
19 c. The viator divorces his or her spouse;
20 d. The viator retires from full-time employment;
21 e. The viator becomes physically or mentally disabled, and a
22 physician determines that the disability prevents the viator from
23 maintaining full-time employment;
- 24 f. The viator was the insured's employer at the time the policy or
25 certificate was issued, and the employment relationship
26 terminated;
- 27 g. A final order, judgment, or decree is entered by a court of
28 competent jurisdiction, on the application of a creditor of the
29 viator, adjudicating the viator bankrupt or insolvent, or
30 approving a petition seeking reorganization of the viator or
31 appointing a receiver, trustee, or liquidator to all or a substantial
32 part of the viator's assets;
- 33 h. The viator experiences a significant decrease in income that is
34 unexpected and that impairs the viator's reasonable ability to
35 pay the policy premium; or
- 36 i. The viator or insured disposes of his or her ownership interests
37 in a closely held corporation.

38 (b) Copies of the independent evidence described in subdivision (a)(4) of this
39 subsection and documents required by G.S. 58-58-250(a) shall be submitted to the
40 insurer when the viatical settlement provider submits a request to the insurer for
41 verification of coverage. The copies shall be accompanied by a letter of attestation from
42 the viatical settlement provider that the copies are true and correct copies of the
43 documents received by the viatical settlement provider.

1 (c) If the viatical settlement provider submits to the insurer a copy of the owner
2 or insured's certification described in subdivision (a)(4) and subsection (b) of this
3 section when the provider submits a request to the insurer to effect the transfer of the
4 policy or certificate to the viatical settlement provider, the copy shall be deemed to
5 conclusively establish that the viatical settlement contract satisfies the requirements of
6 this section and the insurer shall timely respond to the request.

7 **"§ 58-58-260. Advertising for viatical settlements and viatical settlements purchase**
8 **agreements.**

9 (a) The purpose of this section is to provide prospective viators and viatical
10 settlement purchasers with clear and unambiguous statements in the advertisement of
11 viatical settlements and to assure the clear, truthful, and adequate disclosure of the
12 benefits, risks, limitations, and exclusions of any viatical settlement contract or viatical
13 settlement purchase agreement bought or sold. This purpose is intended to be
14 accomplished by the establishment of guidelines and standards of permissible and
15 impermissible conduct in the advertising of viatical settlements to assure that product
16 descriptions are presented in a manner that prevents unfair, deceptive, or misleading
17 advertising and is conducive to accurate presentation and description of viatical
18 settlements through the advertising media and material used by viatical settlement
19 licensees.

20 (b) This section shall apply to any advertising of viatical settlement contracts,
21 viatical purchase agreements or related products or services intended for dissemination
22 in this State, including Internet advertising viewed by persons located in this State.
23 Where disclosure requirements are established pursuant to federal regulation, this
24 section shall be interpreted so as to minimize or eliminate conflict with federal
25 regulation wherever possible.

26 (c) Every viatical settlement licensee shall establish and at all times maintain a
27 system of control over the content, form, and method of dissemination of all
28 advertisements of its contracts, products, and services. All advertisements, regardless of
29 by whom written, created, designed, or presented, shall be the responsibility of the
30 viatical settlement licensee, as well as the individual who created or presented the
31 advertisement. A system of control shall include regular routine notification, at least
32 once a year, to agents and others authorized by the viatical settlement licensee who
33 disseminate advertisements of the requirements and procedures for approval before the
34 use of any advertisements not furnished by the viatical settlement licensee.

35 (d) Advertisements shall be truthful and not misleading in fact or by implication.
36 The form and content of an advertisement of a viatical settlement contract or viatical
37 settlement purchase agreement, product, or service shall be sufficiently complete and
38 clear so as to avoid deception. It shall not have the capacity or tendency to mislead or
39 deceive. Whether an advertisement has the capacity or tendency to mislead or deceive
40 shall be determined by the Commissioner from the overall impression that the
41 advertisement may be reasonably expected to create upon a person of average education
42 or intelligence within the segment of the public to which it is directed.

1 (e) Certain viatical settlement advertisements are deemed false and misleading
2 on their face and are prohibited. False and misleading viatical settlement advertisements
3 include, but are not limited to, the following representations:

4 (1) 'Guaranteed', 'fully secured', '100 percent secured', 'fully insured',
5 'secure', 'safe', 'backed by rated insurance companies', 'backed by
6 federal law', 'backed by state law', or state guaranty funds, or similar
7 representations;

8 (2) 'No risk', 'minimal risk', 'low risk', 'no speculation', 'no fluctuation', or
9 similar representations;

10 (3) 'Qualified or approved for individual retirement accounts (IRAs), Roth
11 IRAs, 401(k) plans, simplified employee pensions (SEP), 403(b),
12 Keogh plans, TSA, other retirement account rollovers,' 'tax deferred,'
13 or similar representations;

14 (4) Utilization of the word 'guaranteed' to describe the fixed return, annual
15 return, principal, earnings, profits, investment, or similar
16 representations;

17 (5) 'No sales charges or fees' or similar representations;

18 (6) 'High yield', 'superior return', 'excellent return', 'high return', 'quick
19 profit', or similar representations;

20 (7) Purported favorable representations or testimonials about the benefits
21 of viatical settlement contracts or viatical settlement purchase
22 agreements as an investment, taken out of context from newspapers,
23 trade papers, journals, radio and television programs, and all other
24 forms of print and electronic media.

25 (f) The information required to be disclosed under this section shall not be
26 minimized, rendered obscure, or presented in an ambiguous fashion or intermingled
27 with the text of the advertisement so as to be confusing or misleading.

28 (g) An advertisement shall not:

29 (1) Omit material information or use words, phrases, statements,
30 references, or illustrations if the omission or use has the capacity,
31 tendency, or effect of misleading or deceiving viators, purchasers, or
32 prospective purchasers as to the nature or extent of any benefit, loss
33 covered, premium payable, or State or federal tax consequence. The
34 fact that the viatical settlement contract or viatical settlement purchase
35 agreement offered is made available for inspection before
36 consummation of the sale, or an offer is made to refund the payment if
37 the viator is not satisfied or that the viatical settlement contract or
38 viatical settlement purchase agreement includes a 'free look' period
39 that satisfies or exceeds legal requirements, does not remedy
40 misleading statements.

41 (2) Use the name or title of a life insurance company or a life insurance
42 policy unless the insurer has approved the advertisement.

43 (3) Represent that premium payments will not be required to be paid on
44 the life insurance policy that is the subject of a viatical settlement

- 1 contract or viatical settlement purchase agreement in order to maintain
2 that policy, unless that is the fact.
- 3 (4) State or imply that interest charged on an accelerated death benefit or a
4 policy loan is unfair, inequitable, or in any manner an incorrect or
5 improper practice.
- 6 (5) State or imply that a viatical settlement contract or viatical settlement
7 purchase agreement, benefit, or service has been approved or endorsed
8 by a group of individuals, society, association, or other organization
9 unless that is the fact and unless any relationship between an
10 organization and the viatical settlement licensee is disclosed. If the
11 entity making the endorsement or testimonial is owned, controlled, or
12 managed by the viatical settlement licensee, or receives any payment
13 or other consideration from the viatical settlement licensee for making
14 an endorsement or testimonial, that fact shall be disclosed in the
15 advertisement.
- 16 (6) Contain statistical information unless it accurately reflects recent and
17 relevant facts. The source of all statistics used in an advertisement
18 shall be identified.
- 19 (7) Disparage insurers, viatical settlement providers, viatical settlement
20 brokers, viatical settlement investment agents, insurance producers,
21 policies, services, or methods of marketing.
- 22 (8) Use a trade name, group designation, name of the parent company of a
23 viatical settlement licensee, name of a particular division of the viatical
24 settlement licensee, service mark, slogan, symbol, or other device or
25 reference without disclosing the name of the viatical settlement
26 licensee, if the advertisement would have the capacity or tendency to
27 mislead or deceive as to the true identity of the viatical settlement
28 licensee, or to create the impression that a company other than the
29 viatical settlement licensee would have any responsibility for the
30 financial obligation under a viatical settlement contractor viatical
31 settlement purchase agreement.
- 32 (9) Use any combination of words, symbols, or physical materials that by
33 their content, phraseology, shape, color, or other characteristics are so
34 similar to a combination of words, symbols, or physical materials used
35 by a government program or agency or otherwise appear to be of such
36 a nature that they tend to mislead prospective viators or purchasers into
37 believing that the solicitation is in some manner connected with a
38 government program or agency.
- 39 (10) Create the impression that the viatical settlement provider, its financial
40 condition or status, the payment of its claims, or the merits,
41 desirability, or advisability of its viatical settlement contracts or
42 viatical settlement purchase agreement forms are recommended or
43 endorsed by any government entity.

1 (h) The words 'free', 'no cost', 'without cost', 'no additional cost', 'at no extra cost'
2 or words of similar import shall not be used with respect to any benefit or service unless
3 true. An advertisement may specify the charge for a benefit or a service or may state
4 that a charge is included in the payment or use other appropriate language.

5 (i) Testimonials, appraisals, or analysis used in advertisements must be genuine;
6 represent the current opinion of the author; be applicable to the viatical settlement
7 contract or viatical settlement purchase agreement, product, or service advertised, if
8 any; and be accurately reproduced with sufficient completeness to avoid misleading or
9 deceiving prospective viators or purchasers as to the nature or scope of the testimonials,
10 appraisal, analysis, or endorsement. In using testimonials, appraisals, or analysis, the
11 viatical settlement licensee makes as its own all the statements contained therein, and
12 the statements are subject to all the provisions of this section.

13 (j) If the individual making a testimonial, appraisal, analysis, or an endorsement
14 has a financial interest in the viatical settlement provider or related entity as a
15 stockholder, director, officer, employee, or otherwise, or receives any benefit directly or
16 indirectly other than required union scale wages, that fact shall be prominently disclosed
17 in the advertisement.

18 (k) When an endorsement refers to benefits received under a viatical settlement
19 contract or viatical settlement purchase agreement all pertinent information shall be
20 retained for a period of five years after its use.

21 (l) The name of the viatical settlement licensee shall be clearly identified in all
22 advertisements about the licensee or its viatical settlement contract or viatical settlement
23 purchase agreements, products, or services, and if any specific viatical settlement
24 contract or viatical settlement purchase agreement is advertised, the viatical settlement
25 contract or viatical settlement purchase agreement shall be identified either by form
26 number or some other appropriate description. If an application is part of the
27 advertisement, the name of the viatical settlement provider shall be shown on the
28 application.

29 (m) An advertisement may state that a viatical settlement licensee is licensed in
30 the state where the advertisement appears, provided it does not exaggerate that fact or
31 suggest or imply that competing viatical settlement licensee may not be so licensed. The
32 advertisement may ask the audience to consult the licensee's web site or contact the
33 department of insurance to find out if the state requires licensing and, if so, whether the
34 viatical settlement provider, viatical settlement broker, or viatical settlement investment
35 agent is licensed.

36 (n) The name of the actual licensee shall be stated in all of its advertisements. An
37 advertisement shall not use a trade name, any group designation, name of any affiliate
38 or controlling entity of the licensee, service mark, slogan, symbol, or other device in a
39 manner that would have the capacity or tendency to mislead or deceive as to the true
40 identity of the actual licensee or create the false impression that an affiliate or
41 controlling entity would have any responsibility for the financial obligation of the
42 licensee.

1 (o) An advertisement shall not directly or indirectly create the impression that
2 any division or agency of the State or of the U. S. government endorses, approves, or
3 favors:

4 (1) Any viatical settlement licensee or its business practices or methods of
5 operation;

6 (2) The merits, desirability, or advisability of any viatical settlement
7 contract or viatical settlement purchase agreement;

8 (3) Any viatical settlement contract or viatical settlement purchase
9 agreement; or

10 (4) Any life insurance policy or life insurance company.

11 (p) If the advertiser emphasizes the speed with which the viatication will occur,
12 the advertising must disclose the average time frame from completed application to the
13 date of offer and from acceptance of the offer to receipt of the funds by the viator.

14 (q) If the advertising emphasizes the dollar amounts available to viators, the
15 advertising shall disclose the average purchase price as a percent of face value obtained
16 by viators contracting with the licensee during the past six months.

17 **"§ 58-58-265. Fraudulent viatical settlement acts, interference, and participation**
18 **of convicted felons prohibited.**

19 (a) A person shall not commit a fraudulent viatical settlement act.

20 (b) A person shall not knowingly or intentionally interfere with the enforcement
21 of the provisions of this Part or investigations of suspected or actual violations of this
22 Part.

23 (c) A person in the business of viatical settlements shall not knowingly or
24 intentionally permit any person convicted of a felony involving dishonesty or breach of
25 trust to participate in the business of viatical settlements.

26 **"§ 58-58-267. Fraud warning required.**

27 (a) Viatical settlements contracts and purchase agreement forms and applications
28 for viatical settlements, regardless of the form of transmission, shall contain the
29 following statement or a substantially similar statement:

30 'Any person who knowingly presents false information in an application
31 for insurance or viatical settlement contract or a viatical settlement
32 purchase agreement is guilty of a crime and may be subject to fines and
33 confinement in prison.'

34 (b) The lack of a statement as required in subsection (a) of this section does not
35 constitute a defense in any prosecution for a fraudulent viatical settlement act.

36 **"§ 58-58-269. Mandatory reporting of fraudulent viatical settlement acts.**

37 (a) Any person engaged in the business of viatical settlements having knowledge
38 or a reasonable belief that a fraudulent viatical settlement act is being, will be, or has
39 been committed shall provide to the Commissioner the information required by, and in a
40 manner prescribed by, the Commissioner.

41 (b) Any other person having knowledge or a reasonable belief that a fraudulent
42 viatical settlement act is being, will be, or has been committed may provide to the
43 Commissioner the information required by, and in a manner prescribed by, the
44 Commissioner.

1 **"§ 58-58-270. Immunity from liability.**

2 (a) No civil liability shall be imposed on and no cause of action shall arise from a
3 person's furnishing information concerning suspected, anticipated, or completed
4 fraudulent viatical settlement acts or suspected or completed fraudulent insurance acts,
5 if the information is provided to or received from:

6 (1) The Commissioner or the Commissioner's employees, agents, or
7 representatives;

8 (2) Federal, state, or local law enforcement or regulatory officials or their
9 employees, agents, or representatives;

10 (3) A person involved in the prevention and detection of fraudulent
11 viatical settlement acts or that person's agents, employees, or
12 representatives;

13 (4) The NAIC, National Association of Securities Dealers (NASD), the
14 North American Securities Administrators Association (NASAA), or
15 their employees, agents, or representatives, or other regulatory body
16 overseeing life insurance, viatical settlements, securities, or investment
17 fraud; or

18 (5) The life insurer that issued the life insurance policy covering the life of
19 the insured.

20 (b) Subsection (a) of this section does not apply to statements made with actual
21 malice. In an action brought against a person for filing a report or furnishing other
22 information concerning a fraudulent viatical settlement act or a fraudulent insurance act,
23 the party bringing the action shall plead specifically any allegation that subsection (a) of
24 this section does not apply because the person filing the report or furnishing the
25 information did so with actual malice.

26 (c) A person identified in subsection (a) of this section shall be entitled to an
27 award of attorney's fees and costs if he or she is the prevailing party in a civil cause of
28 action for libel, slander, or any other relevant tort arising out of activities in carrying out
29 the provisions of this Part, and the party bringing the action was not substantially
30 justified in doing so. For purposes of this section, a proceeding is 'substantially justified'
31 if it had a reasonable basis in law or fact at the time that it was initiated.

32 (d) This section does not abrogate or modify common law or statutory privileges
33 or immunities enjoyed by a person described in subsection (a) of this section.

34 **"§ 58-58-272. Confidentiality.**

35 (a) The documents and evidence provided under G.S. 58-58-270 or obtained by
36 the Commissioner in an investigation of suspected or actual fraudulent viatical
37 settlement acts shall be privileged and confidential, is not a public record, and is not
38 subject to discovery or subpoena in a civil or criminal action.

39 (b) Subsection (a) of this section does not prohibit release by the Commissioner
40 of documents and evidence obtained in an investigation of suspected or actual
41 fraudulent viatical settlement acts:

42 (1) In administrative or judicial proceedings to enforce laws administered
43 by the Commissioner;

1 (2) To federal, state, or local law enforcement or regulatory agencies, to
2 an organization established for the purpose of detecting and preventing
3 fraudulent viatical settlement acts, or to the NAIC; or

4 (3) At the discretion of the Commissioner, to a person in the business of
5 viatical settlements that is aggrieved by a fraudulent viatical settlement
6 act.

7 (c) Release of documents and evidence under subsection (b) of this section does
8 not abrogate or modify the privilege granted in subsection (a) of this section.

9 **"§ 58-58-274. Other law enforcement or regulatory authority.**

10 This Part does not:

11 (1) Preempt the authority or relieve the duty of other law enforcement or
12 regulatory agencies to investigate, examine, and prosecute suspected
13 violations of law;

14 (2) Prevent or prohibit a person from disclosing voluntarily information
15 concerning viatical settlement fraud to a law enforcement or regulatory
16 agency other than the insurance department; or

17 (3) Limit the powers granted elsewhere by the laws of this State to the
18 Commissioner or an insurance fraud unit to investigate and examine
19 possible violations of law and to take appropriate action against
20 wrongdoers.

21 **"§ 58-58-275. Viatical settlement antifraud initiatives.**

22 (a) Viatical settlement providers and viatical settlement brokers shall have in
23 place antifraud initiatives reasonably calculated to detect, prosecute, and prevent
24 fraudulent viatical settlement acts. At the discretion of the Commissioner, the
25 Commissioner may order, or a licensee may request and the Commissioner may grant,
26 such modifications of the following required initiatives as necessary to ensure an
27 effective antifraud program. The modifications may be more or less restrictive than the
28 required initiatives so long as the modifications may reasonably be expected to
29 accomplish the purpose of this section.

30 (b) Antifraud initiatives shall include:

31 (1) Fraud investigators, who may be viatical settlement provider or
32 viatical settlement broker employees or independent contractors; and

33 (2) An antifraud plan, which shall be submitted to the Commissioner. The
34 antifraud plan shall include, but not be limited to:

35 a. A description of the procedures for detecting and investigating
36 possible fraudulent viatical settlement acts and procedures for
37 resolving material inconsistencies between medical records and
38 insurance applications;

39 b. A description of the procedures for reporting possible
40 fraudulent viatical settlement acts to the Commissioner;

41 c. A description of the plan for antifraud education and training of
42 underwriters and other personnel; and

43 d. A description or chart outlining the organizational arrangement
44 of the antifraud personnel who are responsible for the

1 investigation and reporting of possible fraudulent viatical
2 settlement acts and investigating unresolved material
3 inconsistencies between medical records and insurance
4 applications.

5 (c) Antifraud plans submitted to the Commissioner are privileged and
6 confidential, are not public records, and are not subject to discovery or subpoena in a
7 civil or criminal action.

8 **"§ 58-58-280. Injunctions; civil remedies; cease and desist.**

9 (a) In addition to the penalties and other enforcement provisions of this Part, if
10 any person violates this Part or any rule implementing this Part, the Commissioner may
11 seek an injunction in a court of competent jurisdiction and may apply for temporary and
12 permanent orders that the Commissioner determines are necessary to restrain the person
13 from committing the violation.

14 (b) Any person damaged by the acts of a person in violation of this Part may
15 bring a civil action against the person committing the violation in a court of competent
16 jurisdiction.

17 (c) A violation of this Part attendant to the execution of a viatical settlement
18 purchase agreement renders the viatical settlement purchase agreement voidable and
19 subject to rescission by the viatical settlement purchaser, upon return of the policy
20 received to the viatical settlement provider. Suit for rescission may be brought in a court
21 of competent jurisdiction or where the alleged violator resides or has a principal place of
22 business or where the alleged violation occurred.

23 (d) The Commissioner may issue, in accordance with Chapter 150B of the
24 General Statutes, a cease and desist order upon a person that violates any provision of
25 this Part, any rule or order adopted by the Commissioner, or any written agreement
26 entered into with the Commissioner.

27 (e) When the Commissioner finds that an activity in violation of this Part
28 presents an immediate danger to the public that requires an immediate final order, the
29 Commissioner may issue an emergency cease and desist order reciting with particularity
30 the facts underlying the findings. The emergency cease and desist order is effective
31 immediately upon service of a copy of the order on the respondent and remains effective
32 for 90 days. If the Commissioner begins nonemergency cease and desist proceedings,
33 the emergency cease and desist order remains effective, absent an order by a court of
34 competent jurisdiction in accordance with Chapter 150B of the General Statutes.

35 (f) In addition to the penalties and other enforcement provisions of this Part, any
36 person who violates this Part is subject to G.S. 58-2-70.

37 (g) A person convicted of a violation of this Part by a court of competent
38 jurisdiction is guilty of a Class H felony. A person convicted of a violation of this Part
39 shall be ordered to pay restitution to persons aggrieved by the violation of this Part.
40 Restitution shall be ordered in addition to a fine or imprisonment, but not in lieu of a
41 fine or imprisonment.

42 **"§ 58-58-285. Unfair trade practices.**

43 A violation of this Part is an unfair trade practice under Article 63 of this Chapter.

44 **"§ 58-58-290. Authority to adopt rules.**

1 The Commissioner may:

- 2 (1) Adopt rules implementing this Part;
3 (2) Establish standards for evaluating reasonableness of payments under
4 viatical settlement contracts for persons who are terminally or
5 chronically ill. This authority includes, but is not limited to, regulation
6 of discount rates used to determine the amount paid in exchange for
7 assignment, transfer, sale, devise, or bequest of a benefit under a life
8 insurance policy;
9 (3) Establish appropriate licensing requirements, fees, and standards for
10 continued licensure for viatical settlement providers and investment
11 agents;
12 (4) Require a bond or other mechanism for financial accountability for
13 viatical settlement providers and brokers; and
14 (5) Adopt rules governing the relationship and responsibilities of insurers
15 and viatical settlement providers, viatical settlement brokers, and
16 viatical settlement investment agents during the viatication of a life
17 insurance policy or certificate.

18 **"§ 58-58-295. Effective date.**

19 A viatical settlement provider, viatical settlement broker, or viatical settlement
20 investment agent transacting business in this State on the effective date of this act may
21 continue to do so pending approval of the provider's, broker's, or investment agent's
22 application for a license as long as the application is filed with the Commissioner no
23 later than three months from the effective date of this act. If such application is
24 disapproved then the viatical settlement provider, viatical settlement broker, or viatical
25 settlement investment agent shall cease transacting viatical business in this State.

26 **"§ 58-58-300. Disclaimer.**

27 Notwithstanding any provision of this Part, nothing in this Part affects the
28 jurisdiction of the North Carolina Secretary of State or the North Carolina Securities
29 Act."

30 **SECTION 4.** This act becomes effective October 1, 2001.